IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

C.R.P.PD.No.891 of 2006
and
C.M.P.Nos.1 & 2 of 2006

1. Ramdoss
2. Lakshmi ammal

... Petitioners/defendants

Vs.

Balaraman

... Respondent/Plantiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the decretal order dated 13.04.2006 made in I.A.No.399 of 2005 in O.S.No.41 of 2005 on the file of the Sub Court, Arni, Tiruvannamalai District.

For Petitioners : Mr.T.Dhanyakumar
For Respondent : Mr.S.Narayanasamy

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O R D E R

The defendants are the revision petitioners and the revision is filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.399 of 2005 in O.S.No.41 of 2005 dated 13.04.2006 on the file of Sub-Court, Arni, Tiruvannamalai District.

2. The suit filed by the respondents for recovery of an amount of Rs.2,60,000/- due under promissory note. The defendants who are the revision petitioners have filed the written statement denying the execution, apart from denying due consideration for the promissory note. The defendants were set exparte and an exparte decree was passed on 07.11.2005. The defendants filed I.A.No.41 of 2005 under Order 9 Rule 13 Code of Civil Procedure to set aside the exparte decree and the same was filed within 30 days from the date of the exparte decree.

3. The learned Trial Judge having found that the application to set aside exparte decree has been filed within the period of limitation, namely, 30 days and also having accepted the reason given by the defendants in the I.A. that the defendants who are the petitioners in the I.A. that the defendants was affected by jaundice and in that circumstance to give one more opportunity to the defendants, the said petition was allowed, however, on condition that the defendants shall deposit an amount

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of Rs.50,000/- in the court on or before 24.04.2006. It is as against the order of the Trial Court in imposing the condition for deposit of Rs.50,000/- for allowing a petition to set aside the exparte decree, the defendants have filed the present revision.

4. The main ground raised on behalf of the revision petitioners is that when the application to set aside the exparte decree was filed within the prescribed time without delay, the imposition of the condition of deposit of Rs.50,000/-, especially in the circumstances that the first petitioner, namely, the husband is working as a Village Administrative Officer earning less than Rs.5,000/- per month is a onerous condition.

5. The learned counsel for the petitioners would submit that when the amount of promissory note itself is Rs.1,50,000/-, imposing of a condition to deposit an amount of Rs.50,000/- to set aside the exparte decree is onerous, especially in the circumstances that the petition to set aside the exparte decree has been filed within the time stipulated under law.

6. The learned counsel for the petitioner would rely upon the judgement of the Hon'ble Apex Court reported 2003(2) LW 83 (SC) and 2003 CTC 724 to substantiate the contention that the direction to deposit part of the amount claimed is onerous and the court can only pass an order of cost in such circumstances as a condition.

7. The learned counsel for the petitioner would also rely upon a judgement of the Hon'ble Apex Court reported in AIR 2002 SC 1151 to substantiate the contention that the imposition of the condition to deposit Rs.50,000/- is unreasonable and harshly excessive.

8. On the other hand, Mr.S.Narayanasamy, learned counsel appearing for the respondent would rely upon Order 9 Rule 13 Code of Civil Procedure which empowers the court to set aside the exparte decree

> "upon such terms as to cost, payment into court or otherwise as it thinks fit"

and according to the learned counsel it means that it is not only the cost but also any other terms that can be imposed. To substantiate his contention, he would also rely upon the judgement of the Allahabad High Court reported in AIR 1997 Allahabad 276, stating that by imposing a condition of depositing a portion of the decree amount, such order does not warrant any interference, while exercising powers under Section 115 of Code of Civil Procedure.

9. I have heard the learned counsel for the petitioner as also the learned counsel for the respondent and perused the records.

10. Admittedly in this case, the petition to set aside the exparte decree has been filed in time and there was no delay and the suit is on a promissory note for recovery of an amount Rs.1,50,000/- towards principal and the remaining amount towards interest. The judgements referred to, on

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the side of the petitioners to substantiate their contention that the said condition of deposit of part of decree amount is harsh, especially the judgements reported in 2000(3) CTC 724 and 2003 (2) LW 83 (SC) are cases wherein an exparte order was passed against the defendants and it is to set aside the exparte order, applications filed under Order 9 Rule 7 Code of Civil Procedure and it was in those circumstances, the decisions were rendered holding that direction to pay part of decree amount will be onerous. While construing a petition filed under Order 9 Rule 13 of Code of Civil Procedure, which stands in a different footing, in the sense that the defendant is suffering a decree even though it is exparte in nature, which is executable, while it is not so in the case of an exparte order.

11. It is in these circumstances, it is relevant to consider the judgement of the Allahabad High Court rendered in M/s.Rajhans Khandsari Udyog and another Vs. Canara bank, Kiratpur and others reported in 1997 Allahabad 276 as cited by the learned counsel for the respondents. That was the case where an application under Order 9 Rule 13 was filed in which a condition was imposed to set aside the exparte decree directing payment of a portion of the decretal amount. While dealing with the said order the Allahabad High Court exercising revisional powers under Section 115 of Code of Civil Procedure has held that imposing such condition, cannot be held to be beyond the jurisdiction of the court. The Allahabad High Court has also relied upon the earlier judgement reported in AIR 1972 Allahabad 166 apart from AIR 1933 Allahabad 601. The Allahabad High Court has ultimately held

> "7. Under Section 115 CPC the Court would interfere in exercising its power of revision only if there had been a jurisdictional errors as indicated in the clauses (a), (b) and (c) of sub-section (1). There was certainly a jurisdiction in the Court below to impose a condition of payment in the Court and it cannot be said that the Court had exercised a jurisdiction not vested in it by law."

12. Even a reading of the judgement of the Hon'ble Apex Court relied upon by the learned counsel for the petitioner rendered in V.K.Industries and others Vs. M.P.Electricity Board, Rampure Jabalpur reported in AIR 2002 SC 1151 shows that such powers on the part of the court in imposing a condition of depositing part of the decree amount to set aside exparte decree under Order 9 Rule 13 C.P.C. is very much within its powers. That was the case were the suit filed for recovery of Rs.3,84,455.44 with future interest and an exparte decree was passed by the Court and there after when an application was filed under Order 9 Rule 13 of the Civil Procedure Code, there was a direction by the High Court against the defendants to deposit an amount of Rs.2,00,000/- with the Trial Court and furnish bank guarantee for the remaining amount claimed in the suit The Hon'ble Supreme Court while modifying the said order of the High Court and taking into consideration that an amount of Rs.50,000/- was already deposited in the court, has directed deposit of further amount of Rs.50,000/- holding that directing deposit of Rs.2,00,000/- and furnishing of bank guarantee for the remaining amount is onerous and harsh and

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unreasonable in the facts and circumstances of the case even before the trial of the suit on merit. The relevant portions of the judgement of the Hon'ble Apex Court in this regard are as follows:

> "5. Ordinarily, a money decree is not stayed unconditionally and the judgement debtor would be put on terms. Even so, such conditions must be reasonable having regard to all relevant factors. Although ex parte decree was passed against the appellants, once it is set aside on the ground of non-service of suit summons the money decree did not exist for execution. It is no doubt true that in restoring a case the Court may impose conditions to deposit costs or the decretal amount or some portion thereof or to ask the defendant to give security but such conditions should be reasonably and not harshly excessive. In the impugned order the appellants are put on terms to deposit a sum of Rs.2,00,000/- and to furnish a bank guarantee for the remaining suit claim within a period of two months. In our view these terms are onerous, harsh and unreasonable in the facts and circumstances of the case and that too even before the trial of the suit on merits. (the emphasis is mine)
>
> 6. On 29.10.2001, the learned counsel for the appellants stated that within two weeks, a sum of Rs.50,000/- shall be deposited in the trial Court and notice was issued on that day. During the course of hearing the learned counsel informed that a sum of Rs.50,000/- is already deposited in the trial Court.
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> 7. We are of the view that it would be just and appropriate to direct the appellants to deposit a further sum of Rs.50,000/- in the trial court within a period of four weeks from today. The terms to deposit Rs.2,00,000/- and to furnish a bank guarantee for the remaining suit claim shall stand modified as indicated above. The impugned order shall remain undisturbed in all other respects."

13. Therefore, a reading of the said judgement of the Hon'ble Apex Court shows that the court while dealing with an application under Order 9 Rule 13 to set aside the exparte decree, is empowered to impose a condition of directing to deposit a portion of the decree amount, provided such conditions should not be onerous, harsh and unreasonable.

14. Taking the same as a yardstick, when we approach the facts and circumstances of the case, I have no hesitation to come to the conclusion that the order of the Trial court need not be interfered on the ground of want of jurisdiction. The only other ground that has to be considered is as to whether the imposing of such condition is harsh and unreasonable. As I have stated above the present suit is one of promissory note and the defendants have suffered an exparte decree. Even though an application has been filed to set aside the same within time, the claim of the plaintiff as it is seen in the suit is Rs.2,80,000/-. In such circumstances, directing the defendants to deposit an amount of

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Rs.50,000/- cannot be said to be very harsh or unreasonable or onerous in any event.

15. In view of the same, the revision fails and the same is dismissed. No Costs. Consequently, the connected C.M.Ps. are closed.

nbj

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To
1. The Subordinate Judge, Arni, Tiruvannamalai District.
+One cc to Mr. J.Dhanyakumar Advocate SR 6604
+ One cc to Mr. S. Narayanasamy Advocate sR 6286
TEJ (co)
sg 8/2/07

Order in
C.R.P.PD.No.891 of 2006

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